

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

KLEIN ET AL, ) CV-20-8570-JD  
 )  
 PLAINTIFF, ) SAN JOSE, CALIFORNIA  
 )  
 VS. ) FEBRUARY 24, 2022  
 )  
 META PLATFORMS, INC., ) PAGES 1-12  
 )  
 DEFENDANT. )  
 )  
 )

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE JAMES DONATO  
UNITED STATES DISTRICT JUDGE

## A P P E A R A N C E S

FOR THE PLAINTIFF: **BY: STEPHEN A. SWEDLOW**  
QUINN EMANUEL URQUHART & SULLIVAN  
191 N WACKER DR, STE 2700  
CHICAGO, IL 60606

FOR THE PLAINTIFF: **BY: YAVAR BATHAEE**  
BATHAEE DUNNE LLP  
445 PARK AVENUE, 9TH FLOOR  
NEW YORK, NY 10022

APPEARANCES CONTINUED ON THE NEXT PAGE

OFFICIAL COURT REPORTER: SUMMER FISHER, CSR, CRR  
CERTIFICATE NUMBER 13185

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY  
TRANSCRIPT PRODUCED WITH COMPUTER

1                   APPEARANCES CONTINUED:

2                   FOR THE PLAINTIFF:  
3                   LOVELAND

4                   **BY: SAM BROWN**  
5                   HENNIG KRAMER RUIZ & SINGH  
6                   3600 WILSHIRE BLVD., STE. 1908  
7                   LOS ANGELES, CA, 91103

8                   FOR THE DEFENDANT:

9                   **BY: SONAL N. MEHTA**  
10                  WILMER HALE LLP  
11                  2600 EL CAMINO REAL, SUITE 400  
12                  PALO ALTO, CA 94306

13                  FOR THE DEFENDANT:

14                  **BY: DAVID ZAHLER GRINGER**  
15                  WILMER HALE LLP  
16                  7 WORLD TRADE CENTER  
17                  250 GREENWICH STREET  
18                  NEW YORK, NY 10007

1 SAN JOSE, CALIFORNIA

FEBRUARY 24, 2022

## 2 P R O C E E D I N G S

3 (COURT CONVENED AT 2:05 P.M.)

4 THE CLERK: CALLING CIVIL 20-8570. KLEIN V. META  
5 PLATFORMS, INC., ET AL.6 COUNSEL FOR THE PLAINTIFFS, PLEASE STATE YOUR APPEARANCE  
7 FOR THE RECORD.8 MR. SWEDLOW: STEPHEN SWEDLOW, QUINN EMANUEL, FOR THE  
9 USER PLAINTIFFS.

10 THE COURT: COUNSEL FOR THE DEFENDANTS.

11 MS. MEHTA: YES. GOOD AFTERNOON, YOUR HONOR.

12 SONAL MEHTA FROM WILMER HALE ON BEHALF OF THE DEFENDANT,  
13 META PLATFORMS, INC. AND WITH ME IS MY COLLEAGUE,  
14 DAVID GRINGER.15 THE CLERK: I THINK THERE'S ONE MORE ATTORNEY WHO  
16 NOTIFIED ME SEVEN MINUTES AGO THAT HE WAS SUPPOSED TO APPEAR,  
17 SO HE'S ON THE LINE AS WELL.

18 MR. BROWN: MY APOLOGIES, YOUR HONOR.

19 SAM BROWN, I'M REPRESENTING THE LOVELAND PLAINTIFFS.20 THE COURT: OKAY. WELCOME TO COURTROOM 11 IN  
21 SAN FRANCISCO. I LOOK FORWARD TO THE MONOPOLIZATION, A  
22 FAVORITE OF MINE, WE DON'T GET THESE VERY OFTEN. WE ARE JUST A  
23 MEETING AMONG FRIENDS TODAY, SO LET'S GET STARTED.24 SO THE FIRST ISSUE TODAY IS REGARDING THE STAY, THAT ANY  
25 NEW COMPLAINT WOULD REMAIN STAYED PENDING THE DECISION ON THE

1 MOTION TO RELATE.

2 MR. BROWN: YES, THAT'S OUR POSITION, WE HAVE  
3 REQUESTED A STAY. THAT'S OUR POSITION.

4 THE COURT: WHICH CASE IS THAT?

5 MR. BROWN: THAT IS LOVELAND, IT HAS NOT BEEN  
6 RE-CAPTIONED. CASE NUMBER IS GOING TO BE 21-CV-03300.

7 THE COURT: AND WHAT'S THE OTHER ONE? ROSENMAN?

8 MR. BROWN: I DON'T REPRESENT ROSENMAN.

9 THE COURT: YOU DON'T? WHO IS HERE FOR ROSENMAN?

10 SO I'M JUST NOT UNDERSTANDING WHY THESE CASES AREN'T  
11 CONSOLIDATED AND WHY ARE WE GOING TO STAY THEM

12 MR. BROWN: YOUR HONOR, THERE WAS A CONSOLIDATION  
13 ORDER PRIOR TO MY PARTICIPATION. BUT THE CONSOLIDATION ORDER  
14 SIMPLY SAYS CONSOLIDATED, IT DOES NOT EXPLAIN WHAT THE PURPOSE  
15 OF THE CONSOLIDATION WAS, WAS IT MERGED AND ENTIRELY  
16 CONSOLIDATED?

17 SO OUR POSITION IS THAT HAS TO BE CLARIFIED, AND TO  
18 ACTUALLY WHOLLY MERGE THE CASE IS DIFFERENT THAN SIMPLY A TOO  
19 WIDE COURT ORDER CONSOLIDATING THE CASE.

20 MR. SWEDLOW: YOUR HONOR, IF I COULD CHIME IN. THIS  
21 IS STEPHEN SWEDLOW FOR THE CONSUMER CLASS.

22 SO THERE WERE A BUNCH OF CASES FILED, SORT OF IN A FLURRY  
23 AT THE BEGINNING, AND I THINK JUDGE KOH ADDRESSED THOSE,  
24 CONSOLIDATED THEM AND BROKE THEM INTO TWO CLASSES, ONE USER ONE  
25 ADVERTISER, DID THE MOTIONS TO DISMISS.

1 AND I THINK THESE CASES WERE FILED LATER FOR DIFFERENT  
2 CLASSES AND CONSOLIDATED, BUT NOT SPECIFICALLY ADDRESSED. AND  
3 SO -- AND NOT REALLY INCORPORATED INTO THE MOTION TO DISMISS  
4 PROCESS. SO I THINK -- AND I'M NOT DISPARAGING ANY ASPECT OF  
5 THE WHOLE PROCESS, I'M JUST SAYING THAT'S WHY THEY CAME IN  
6 LATER, THOSE TWO CASES CAME IN LATER, AND WERE CONSOLIDATED BUT  
7 WEREN'T ADDRESSED SPECIFICALLY.

8 MS. MEHTA: AND YOUR HONOR, IF I MAY, MR. SWEDLOW IS  
9 CORRECT THAT THE TIMING WAS A BIT OFF, BUT WHAT HAPPENED WAS  
10 THE LOVELAND CASE WAS FILED IN PENNSYLVANIA, THE ROSENMAN CASE  
11 WAS FILED IN CALIFORNIA COURT, REMOVED, THEN RE-FILED, THEN  
12 REMOVED AGAIN.

13 THERE WERE A NUMBER OF PROCEDURAL STEPS. ULTIMATELY, THE  
14 CLAIMS ARE THE SAME AT THEIR CORE AS THE USER CLAIMS, AND  
15 JUDGE KOH DID ISSUE AN ORDER CONSOLIDATING THEM. AND THEN WE  
16 SOUGHT -- AFTER RECEIVING THE POSITION THAT THEY WERE SOMEHOW  
17 DIFFERENT, WE SOUGHT CLARIFICATION, AND THAT MOTION FOR  
18 CLARIFICATION OF THE CONSOLIDATION ORDER WAS PENDING WHEN THE  
19 CASE GOT REASSIGNED. WE HAVEN'T GOTTEN A RULING ON THAT.

20 THE COURT: ALL RIGHT.

21 WELL, LET ME JUST TELL YOU MY PRACTICE, WHEN I  
22 CONSOLIDATE, THEY ARE CONSOLIDATED FOR ALL PURPOSES, AND ANY  
23 AFTER-FILED CASES ARE DEEMED CONSOLIDATED AS WELL.

24 SO I'M GOING TO TURN THIS BACK TO YOU, MR. BROWN, AND  
25 WHOEVER THE -- WHAT'S THE OTHER ONE, ROSENMAN, WHOEVER THE LEAD

1 COUNSEL IS IN ROSENMAN, YOU TWO WORK WITH EVERYBODY ELSE AND  
2 JUST COME UP WITH A PROPOSAL, OKAY, ABOUT WHAT YOU WANT TO DO.

3 IF YOU WANT TO FOLD THEM IN, THAT'S GREAT, IF YOU WANT TO  
4 DISMISS THEM, THAT'S FINE. WHAT I DON'T WANT TO DO IS I DON'T  
5 WANT TWO OTHER CASES DANGLING ON THE SIDE STAYED WHILE ALL OF  
6 THIS WORK IS BEING DONE. SO COME UP WITH A SOLUTION OTHER THAN  
7 A STAY.

8 IF FOR SOME REASON THE CASES ARE SO DIFFERENT THAT A STAY  
9 MAKES SENSE, THEN YOU SHOULD PROBABLY REVISIT WHETHER THEY  
10 SHOULD BE HERE AT ALL. BUT ASSUMING THAT THEY ARE  
11 SIGNIFICANTLY OR EVEN COMPLETELY OVERLAPPING WITH THE EXISTING  
12 CASES, YOU ALL WORK SOMETHING OUT, OKAY.

13 SO JUST TELL ME THE NEXT -- HOW ABOUT TWO WEEKS FOR THAT,  
14 IS EVERYBODY OKAY WITH THAT?

15 MR. SWEDLOW: YES, YOUR HONOR.

16 THE COURT: MR. BROWN?

17 MR. BROWN: YEAH, THAT WILL WORK.

18 MR. SWEDLOW: WOULD YOU LIKE US TO FILE A THREE-PAGE,  
19 SOMETHING TO INFORM YOU WHAT WE ARE PROPOSING?

20 THE COURT: THREE-PAGE AS A PROXY FOR SHORT, YES, IT  
21 COULD BE ONE PAGE, ALL YOU HAVE TO DO IS TELL ME WHAT YOU ALL  
22 WANT TO DO AND I WILL MAKE IT HAPPEN.

23 MR. SWEDLOW: OKAY.

24 THE COURT: OKAY.

25 THE NEXT QUESTION I HAVE IS JPML IS DENIED, I'M NOT SURE

1                   WHAT THEY DENIED, BUT YOU'RE NOT LEAVING CALIFORNIA, SO THAT'S  
2 DENIED.

3                   MS. MEHTA: YOUR HONOR, JUST ONE CLARIFICATION ON  
4 THAT, THE JPML FOUND THE REQUEST TO TAG ALONG THE ADVERTISER  
5 CLAIM WAS PREMATURE BECAUSE THERE WAS THE POTENTIAL THAT THE  
6 ADVERTISERS WOULD BE AMENDING AFTER JUDGE KOH'S ORDER. WE NOW  
7 UNDERSTAND THAT THEY DO INTEND TO AMEND ON MONDAY.

8                   DEPENDING ON THE NATURE AND THE SCOPE OF THAT AMENDMENT,  
9 IT IS QUITE POSSIBLE THAT MEHTA WOULD AGAIN SEEK TO TAG THAT  
10 ACTION OR PART OF THAT ACTION TO THE PENDING MDL, BECAUSE THE  
11 CORE OF THE CLAIMS AT PRESENT, RELATE TO AN AGREEMENT WITH  
12 GOOGLE, AND THAT IS AT ISSUE IN THE MDL PROCEEDING IN NEW YORK.

13                  SO I JUST WANTED TO ALERT YOU TO THE POSSIBILITY THAT WE  
14 MAY BE FILING ANOTHER TAG ALONG.

15                  THE COURT: ALL RIGHT. OKAY.

16                  WHAT ABOUT SOMEONE HAS A MOTION TO COMPEL, WHO IS DOING  
17 THAT? OR MOTION TO COMPEL ARBITRATION?

18                  MS. MEHTA: NO, YOUR HONOR, THERE IS NO PRESENT  
19 MOTION TO COMPEL ARBITRATION, THERE IS --

20                  THE COURT: THIS IS IN THE ANTICIPATED MOTION  
21 SECTION?

22                  MS. MEHTA: YES, YOUR HONOR.

23                  SO WHAT WE HAVE SAID IS THERE ARE SOME MEMBERS OF THE  
24 PUTATIVE CLASS THAT WOULD ISSUE A PROVISION.

25                  THE COURT: MS. MEHTA, YOU FROZE THERE FOR A MOMENT.

1 IT'S OKAY NOW. SOMETHING HAPPENED.

2 WHO HAS THE MOTION TO COMPEL ARBITRATION?

3 MS. MEHTA: YES, YOUR HONOR. WE, BEING META, HAVE A  
4 POSSIBLE MOTION TO COMPEL ARBITRATION WITH RESPECT TO MEMBERS  
5 OF A PUTATIVE CLASS. WE ARE NOT SEEKING TO COMPEL ARBITRATION  
6 WITH RESPECT TO THE NAMED CLASS REPRESENTATIVES. BUT SHOULD  
7 THERE BE A CLASS CERTIFIED, SOME MEMBERS OF THE PUTATIVE CLASS  
8 WOULD BE SUBJECT TO ARBITRATION OBLIGATIONS. SO WE SIMPLY  
9 WANTED TO MAKE SURE THAT EVERYONE WAS ON NOTICE OF THAT  
10 THROUGHOUT THE CASE.

11 THE COURT: I THINK THE ANSWER WOULD BE EXCLUDED FROM  
12 ANY CERTIFIED CLASS. I WOULDN'T -- I WOULDN'T NEED, THEY JUST  
13 WOULDN'T BE PART OF THE CASE.

14 MS. MEHTA: I WOULD EXPECT THAT WE WOULD BE ABLE TO  
15 SORT THAT OUT THROUGH THE CLASS CERTIFICATION PROCESS.

16 THE COURT: OKAY. ALL RIGHT.

17 OH, DISCOVERY. I, LIKE MOST JUDGES, I KEEP MY OWN  
18 DISCOVERY, SO JUDGE DEMARCHE WILL NO LONGER BE HANDLING  
19 DISCOVERY. I ASKED HER AND SHE GRACIOUSLY AGREED TO FINISH  
20 WHATEVER THINGS ARE IN FRONT OF HER, BUT FROM NOW ON OUT, I DO  
21 THE DISCOVERY, AND I DO IT ACCORDING TO MY STANDING ORDER ON  
22 DISCOVERY. SO MAKE SURE YOU READ IT THAT.

23 AND NO MOTIONS. YOU GET A THREE-PAGE LETTER, NO RESPONSES  
24 UNTIL I CALL FOR IT, AND TYPICALLY THESE THINGS ARE RESOLVED  
25 WITHIN THREE TO FIVE WEEKS THAT ARE BEING FILED. BUT PLEASE

1 FOLLOW THAT DISCOVERY ORDER.

2 OKAY. AND SOMEONE, I DON'T KNOW WHETHER THIS WAS  
3 PRESCIENT BASED ON MY TYPICAL PRACTICE OR WHETHER THIS HAS  
4 ALREADY BEEN DISCUSSED BEFORE, BUT I DO DO WHAT ARE FORMERLY  
5 KNOWN AS CONCURRENT EXPERT EVIDENTIARY PROCEEDINGS, THEY ARE  
6 KNOWN IN AUSTRALIA AND BY ME AS HOT TUBS, AND YOU HAVE THAT  
7 BUILT IN, IS THAT RIGHT?

8 MS. MEHTA: YES, YOUR HONOR.

9 THE COURT: ALL RIGHT. GOOD. OKAY.

10 OKAY. WELL, I WILL TAKE A LOOK AT THE SCHEDULING ORDER, I  
11 AM GOING TO HAVE TO FIZZLE WITH IT A BIT.

12 ALL RIGHT. ANYTHING ELSE FOR TODAY? LET'S START WITH ON  
13 THE PLAINTIFF'S SIDE.

14 MR. SWEDLOW: NO, YOUR HONOR.

15 I THINK WE ARE -- LIKE YOU SAID, WE ARE TALKING AMONGST  
16 FRIENDS AND I DON'T WANT TO RAISE ISSUES BEFORE YOU HAVE ANY  
17 IDEA WHAT WE ARE TALKING ABOUT, SO WE WILL JUST WAIT FOR YOUR  
18 ORDER ON SCHEDULING.

19 THE COURT: OKAY.

20 ANYBODY ELSE FOR THE PLAINTIFF'S SIDE?

21 MR. BATHAEE: WE TAKE THE SAME POSITION, YOUR HONOR.

22 THE COURT: OKAY.

23 DEFENDANTS?

24 MS. MEHTA: NO, YOUR HONOR.

25 I THINK WE TRIED TO GET YOU A SCHEDULE THAT WE THOUGHT WAS

1           REALISTIC AND THAT BOTH SIDES COULD WORK WITH AND WE LOOK  
2           FORWARD TO YOUR SCHEDULING ORDER.

3           THE COURT: ALL RIGHT. SOUNDS GREAT.

4           OKAY. NOW THANKS FOR COMING IN. NOW I WILL PROBABLY DO  
5           SUBSTANTIVE THINGS IN PERSON, SO PLEASE BE PREPARED FOR THAT.  
6           CASE MANAGEMENT, DEPENDING ON THE ISSUES, IS FINE.

7           NOW, I DON'T REALLY HAVE A SENSE OF HOW LARGE THIS CASE IS  
8           YET, AND THERE'S CERTAINLY A NUMBER OF CASES THAT HAVE BEEN  
9           FOLDED INTO IT, IT DOESN'T NECESSARILY MEAN IT'S THAT LARGE.  
10          BUT IN MY LARGER CASES, MDL AND NON-MDL, I TYPICALLY DO SORT OF  
11          LIKE TO SET UP A QUARTERLY STATUS CONFERENCE, DATES. IF WE  
12          DON'T NEED TO DO IT, YOU CAN TELL ME AND WE CAN CANCEL IT, BUT  
13          IF YOU ALL WANT TO DO THAT, PUT THAT INTO THE STATEMENT YOU ARE  
14          GOING TO FILE ABOUT THE TWO TAG ALONG CASES, AND PICK A FIRST  
15          DATE THAT YOU WANT TO DO THAT -- AND I DON'T MIND, I THINK IT'S  
16          ACTUALLY GOOD, IT USUALLY ALLOWS PEOPLE TO RAISE ISSUES I CAN  
17          GET AHEAD OF BEFORE THEY BECOME A PROBLEM. BUT IT'S UP TO YOU,  
18          IF YOU DON'T WANT TO DO IT, THAT'S FINE. IF YOU DO WANT TO DO  
19          IT, JUST LET ME KNOW AND WE WILL SET THEM UP AND WE CAN ALWAYS  
20          CANCEL. SO I LEAVE IT UP TO YOU.

21          MS. MEHTA: YOUR HONOR, COULD I ASK FOR ONE PIECE OF  
22          GUIDANCE? ON THE STATEMENT REPORTING TO ROSENMAN AND LOVELAND  
23          AND NOW ON THE CASE MANAGEMENT QUESTION, WERE YOU CONTEMPLATING  
24          THAT WOULD BE JOINT AS BETWEEN ALL THE PARTIES? I ASSUME SO,  
25          BUT I WANTED TO CONFIRM.

1                   THE COURT: YES, EVERYBODY.

2                   MS. MEHTA: THANK YOU.

3                   THE COURT: EVERYBODY SHOULD HAVE A VIEW.

4                   NOW I DON'T KNOW WHO IS DOING THAT OTHER CASE, THEIR  
5                   LAWYER DIDN'T SHOW UP, SO SOMEONE IS GOING TO HAVE TO TELL HIM  
6                   OR HER THAT WAS THE EXPECTATION.

7                   MS. MEHTA: WE WILL DO SO.

8                   THE COURT: ALL RIGHT. THANKS EVERYONE.

9                   THANK, YOU SUMMER.

10                  MS. MEHTA: THANK YOU, YOUR HONOR.

11                  (THE PROCEEDINGS WERE CONCLUDED AT 2:16 P.M.)

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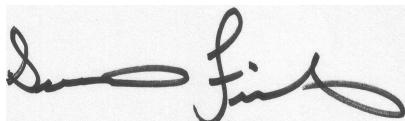
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3  
4 **CERTIFICATE OF REPORTER**  
5  
6  
7

8 I, THE UNDERSIGNED OFFICIAL COURT  
9 REPORTER OF THE UNITED STATES DISTRICT COURT FOR  
10 THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH  
11 FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY  
12 CERTIFY:

13 THAT THE FOREGOING TRANSCRIPT,  
14 CERTIFICATE INCLUSIVE, CONSTITUTES A TRUE, FULL AND  
15 CORRECT TRANSCRIPT OF MY SHORTHAND NOTES TAKEN AS  
16 SUCH OFFICIAL COURT REPORTER OF THE PROCEEDINGS  
17 HEREINBEFORE ENTITLED AND REDUCED BY COMPUTER-AIDED  
18 TRANSCRIPTION TO THE BEST OF MY ABILITY.

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22  
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25 SUMMER A. FISHER, CSR, CRR  
CERTIFICATE NUMBER 13185

DATED: 3/4/22